

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 11-CV-341-WMC

ADVANCE AUTO BODY, LLC,

SHAWN BIERD and KATRINA BIERD,

Madison, Wisconsin

August 30th, 2012

Defendants.

1:30 p.m.

* * * * *

STENOGRAPHIC TRANSCRIPT OF HEARING
HELD BEFORE CHIEF JUDGE WILLIAM M. CONLEY

APPEARANCES:

For the Plaintiff: United States Department of Justice
Tax Division
BY: MIRANDA BUREAU
P.O. Box 7238
Washington, DC 20044

For the Defendants: Advance Auto Body, LLC
2533 Advance Road
Madison, Wisconsin 53718
PRO SE

Shawn Bierd
1754 N. Jargo Road
Deerfield, Wisconsin 53531
PRO SE

CHERYL A. SEEMAN, RMR, CRR
Official Court Reporter
United States District Court
120 North Henry Street, Room 520
Madison, Wisconsin 53703
1-608-255-3821

APPEARANCES: (Continued)

For the Defendants: Katrina Bierd
1754 N. Jargo Road
Deerfield, Wisconsin 53531
PRO SE

Also Present: Bart Brellenthin, IRS

I-N-D-E-X

<u>GOVERNMENT'S WITNESS</u>	<u>EXAMINATION</u>	<u>PAGES</u>
SHAWN BIERD	Adverse by Ms. Bureau	7-30

E-X-H-I-B-I-T-S

<u>GOVERNMENT'S EXHIBITS</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Ex. 1 - Check Ledger	14	-
Ex. 2 - Payroll Summary	16	-
Ex. 3 - "	24	-

(Called to order.)

THE CLERK: Case No. 11-CV-341-WMC, *United States of America v. Advance Auto Body, LLC, Shawn Bierd and Katrina Bierd*, is called for a hearing. May we have the appearances, please?

MS. BUREAU: Miranda Bureau for the United States.

THE COURT: And you should state your appearances.

MR. BIERD: Shawn Bierd representing Advance Auto Body.

1 THE COURT: Are you an attorney, Mr. Bierd?

2 MR. BIERD: Absolutely not.

3 THE COURT: Yeah. You're not able to represent
4 your company because it's an LLC. It's incorporated
5 under the laws of the state of Wisconsin, and as such, it
6 takes advantage of the benefits of those laws, but it
7 also bears the requirement of being represented by
8 counsel. So your appearance is noted for yourself, but
9 unfortunately, you cannot appear for your company. And,
10 Mrs. Bierd, you should state your appearances.

11 MRS. BIERD: Katrina Bierd.

12 THE COURT: Very good. This case is set for a
13 hearing on a motion for contempt and to establish a
14 default judgment. On December 23rd the Court found
15 defendant Auto Body, LLC in default for failing to
16 appear.

17 More recently the Court found Shawn Bierd and his
18 wife Katrina Bierd in default for failing to comply with
19 the Court's order compelling discovery. In that same
20 order the Court set this hearing to determine whether to
21 hold the individual defendants in civil contempt,
22 including incarcerating them to force compliance with the
23 ordered to compel discovery and with the terms of the
24 preliminary injunction.

25 This order was personally served on Shawn Bierd by

1 the marshals on August 20. And I appreciate the Bierds
2 appearing before the Court today so that we could avoid
3 having to send the marshals out to arrest you.

4 I understand that Mrs. Bierd did appear this morning
5 for a deposition; is that correct?

6 MS. BUREAU: That's correct, Your Honor, she
7 did.

8 THE COURT: All right. Then can you tell me
9 where we stand in terms of compliance with the discovery
10 requests?

11 MS. BUREAU: Certainly, Your Honor. Mrs. Bierd
12 has complied with her responsibility to appear for a
13 deposition. We also served a document request that was
14 identical on both Katrina Bierd and Shawn Bierd. Based
15 on Mrs. Bierd's testimony this morning, I am satisfied
16 that she has complied with the court orders in this case
17 to the best of her ability.

18 It appears that Mr. Bierd is currently more in
19 control of the affairs of the business. Mr. Bierd, this
20 morning, did produce some Quickbooks reports in response
21 to the document request. He claimed that he did not have
22 bank statements or cancelled checks or other documents
23 that are requested. The government doesn't have enough
24 information to know whether or not that's the case. In
25 terms of the preliminary injunction order, however,

1 Mr. Bierd has not complied with the terms of the
2 preliminary injunction order.

3 THE COURT: And specifically, which portions of
4 those terms are you looking for compliance on?

5 MS. BUREAU: The filing of 941 returns and the
6 paying over of the employment taxes for the employees of
7 Advance Auto Body.

8 THE COURT: All right. Then I will hear from
9 you, Mr. Bierd, as to why -- first of all, do you agree
10 that you have not complied in turning over 941 returns or
11 withholding tax -- employment tax from your employees?

12 MR. BIERD: The dates listed, I don't believe we
13 had any employees.

14 THE COURT: Okay. Have you -- did you attempt
15 to take the deposition of Mr. Bierd?

16 MS. BUREAU: I did not, Your Honor. I had
17 planned to do that earlier. And then when Mrs. Bierd did
18 not comply, we didn't receive a document request, because
19 I didn't have documents at the time, I pursued things
20 with the Court to try to get that discovery complied
21 with.

22 THE COURT: All right. It's your position that
23 he hasn't complied. On the other hand, I don't know what
24 his position is and I think we need to examine him under
25 oath.

1 MS. BUREAU: Yes, Your Honor.

2 THE COURT: So are you prepared to proceed in
3 open court to do that or do you want to take a
4 deposition?

5 MS. BUREAU: I'm prepared to proceed in court,
6 Your Honor.

7 THE COURT: All right. Before I call you
8 forward, Mr. Bierd, to testify, let me ask if you have
9 any general statement you wish to make in terms of your
10 alleged failure to comply with the discovery requests and
11 with the injunction that the Court entered.

12 MR. BIERD: With all due respect to the people
13 involved in this case, I don't -- I still don't
14 understand why my wife was required to make a deposition.
15 She has no information with regards to this.

16 THE COURT: The good news is we're no longer
17 concerned with your wife because the government believes
18 she's discharged her duties.

19 MR. BIERD: Okay.

20 THE COURT: So the question is if you wish to
21 make any preliminary statement as to why -- well, as to
22 whether you are in compliance with the discovery requests
23 and the injunction that the Court entered in this case or
24 if you are not in compliance, why not.

25 MR. BIERD: Well, I kind of -- I don't really

1 under the question.

2 THE COURT: Well, then you don't wish to make a
3 statement?

4 MR. BIERD: Yeah. Well, I would be open to a
5 deposition.

6 THE COURT: We're past depositions, sir. You're
7 about to be sworn in as a witness.

8 MR. BIERD: I have never been invited to a
9 deposition, that I know of.

10 THE COURT: That's fine. Then you should step
11 forward, and please step forward here, and be sworn in
12 and you will be examined under oath.

13 MR. BIERD: Okay.

14 THE COURT: If you just stand and raise your
15 right hand.

16 **SHAWN BIERD, DEFENDANT, SWORN**

17 ADVERSE EXAMINATION

18 BY MS. BUREAU:

19 Q. Good afternoon, Mr. Bierd.

20 A. Hi.

21 Q. Are you the owner of Advance Auto Body?

22 A. I am the manager of that entity, yes.

23 Q. What does Advance Auto Body do?

24 A. Advance Auto Body serves the needs of the community
25 in the east portion of Madison with regard to damage to

1 their automobiles.

2 THE COURT: And, Mr. Bierd, I want to make sure
3 I understood your earlier answer. Do you hold the shares
4 in LLC?

5 THE WITNESS: Well, that's probably something
6 that I should clarify. We originally, under the advice
7 of an attorney, set the company up as an LLC. We decided
8 to terminate that status probably close to -- at least
9 eight years ago.

10 THE COURT: So you haven't operated as an LLC
11 for eight years?

12 THE WITNESS: That's correct.

13 THE COURT: Did you file -- I'm sorry, stay with
14 me -- did you file notice with the State of Wisconsin
15 that you were dissolving the LLC?

16 THE WITNESS: Well, they had sent us some
17 paperwork that it was delinquent as far as reporting
18 requirements and such like that. And she said they were
19 going to dissolve it and we figured that was good enough.

20 THE COURT: And when was that?

21 THE WITNESS: 2005.

22 THE COURT: All right. And since then you've
23 been operating essentially as a DBA?

24 THE WITNESS: In name only.

25 THE COURT: In name. But it's your business

1 then?

2 THE WITNESS: Yeah.

3 THE COURT: Let me say it differently.

4 THE WITNESS: I repair the cars, yes.

5 THE COURT: You own -- you operate as Advance
6 Auto Body, you personally?

7 THE WITNESS: Yeah. I mean --

8 THE COURT: No, it isn't a yeah. You either do
9 or you don't. Does somebody else own any of the assets?

10 THE WITNESS: No.

11 THE COURT: So it's your business?

12 THE WITNESS: It's just me.

13 THE COURT: And it's operating as a BDA doing
14 business as -- you're doing business as Advance Auto
15 Body; is that correct?

16 THE WITNESS: That sounds correct.

17 THE COURT: What part are you uncertain about?

18 THE WITNESS: Well, I mean, it depends on your
19 definition of "operating a business." I fix cars and by
20 necessity I guess I have to call myself a business and
21 that's my livelihood.

22 THE COURT: Well, you advertise yourself as
23 Advance Auto Body?

24 THE WITNESS: Correct. That's the name that our
25 customers identify us with.

1 THE COURT: Does anyone else work at that
2 location for you?

3 THE WITNESS: I have several independent
4 contractors, correct.

5 THE COURT: And what are their names?

6 THE WITNESS: It varies. I know a lot of people
7 in the business.

8 THE COURT: Okay. Let's start as of right now,
9 who's doing work for you?

10 THE WITNESS: My son, Trent Bierd.

11 THE COURT: Okay.

12 THE WITNESS: And Fritz Weber. And years, I'm
13 kind of drawing a blank.

14 THE COURT: I'm talking about right now.

15 THE WITNESS: Right now?

16 THE COURT: Yeah.

17 THE WITNESS: That's pretty much it.

18 THE COURT: All right. Go back one year. Is
19 there anyone else?

20 THE WITNESS: That's what I'm trying to think
21 of. I apologize. I'm a little nervous here.

22 THE COURT: I'm not buying that for a second,
23 sir. You need to tell me what you remember in the last
24 year. You don't seem the least bit nervous. What other
25 employees -- what other people did work for Advance Auto

1 Body in the last year? You're telling me you can't
2 remember a single person?

3 THE WITNESS: I don't remember at all.

4 THE COURT: What about the last five years?

5 THE WITNESS: I don't have that many people
6 helping.

7 THE COURT: You can't think of a single other
8 person?

9 THE WITNESS: I have, if -- I have a listing on
10 my -- Miranda has the only copy.

11 THE COURT: Of the list of your employees?

12 THE WITNESS: Correct.

13 THE COURT: All right. I will give it back to
14 you then, Counsel, to proceed.

15 BY MS. BUREAU:

16 Q. Sir, Advance Auto Body -- where is Advance Auto Body
17 located?

18 A. Street address?

19 Q. Yes, please.

20 A. 2533 Advance Road; Madison, Wisconsin.

21 Q. In the past you have filed Forms 941 with the
22 government; is that right?

23 A. Correct.

24 Q. And that was because the IRS made assessments
25 against Advance Auto Body for employment taxes; is that

1 right?

2 A. Correct.

3 Q. And during that time you were not making federal tax
4 deposits really to those employees, were you?

5 A. I'm sorry?

6 Q. You were not making federal tax deposits, were you?

7 A. No, ma'am.

8 Q. You mentioned Mr. Weber as an independent
9 contractor. Can you describe what Mr. Weber does for
10 Advance Auto Body?

11 A. Well, I try to handle most of the repair load, I
12 myself. Occasionally I get overwhelmed and he would fill
13 in for anything I can't keep up on.

14 Q. Does he work on cars?

15 A. Correct.

16 Q. Does he use tools in his work on cars?

17 A. Yeah.

18 Q. Where does he obtain those tools?

19 A. They're mine.

20 Q. Where does he perform the work on cars? When he
21 works on cars, where does he perform that work?

22 A. At the business.

23 Q. Do you have a contract with Mr. Weber?

24 A. That's correct.

25 Q. Do you have that with you today?

1 A. Huh-uh.

2 Q. When did you enter into that contract with
3 Mr. Weber?

4 A. I don't recall.

5 Q. How many hours per week does Mr. Weber work?

6 A. Generally speaking?

7 Q. Yes.

8 A. I would say maybe 20, up to 20.

9 Q. How many hours did Mr. Weber work last week?

10 A. I don't recall.

11 Q. And the week before that, how many hours did he
12 work?

13 A. I can generalize and say 20 to 30 hours.

14 Q. What time of day does Mr. Weber arrive at the
15 workplace?

16 A. Hard to say. Sometimes nine, maybe ten.

17 Q. When he arrives, how does he know what cars to work
18 on?

19 A. Whatever is there and I direct him to work on, he
20 works on.

21 Q. How much do you pay Mr. Weber?

22 A. It's by the job as a percentage.

23 Q. The last job that he worked, how much did you pay
24 him?

25 A. I don't recall.

1 Q. The job before that, how much did you pay him?

2 A. I don't have any of these records with me.

3 THE COURT: Where are those records?

4 THE WITNESS: At my shop.

5 THE COURT: Have they been requested?

6 MS. BUREAU: They were not, Your Honor. This
7 morning is the first that we've heard that he's claiming
8 to have independent contractors.

9 THE COURT: All right. You may proceed.

10 BY MS. BUREAU:

11 Q. How do you pay Mr. Weber?

12 A. By check, typically.

13 Q. And how often do you pay him?

14 A. Well, I'd like -- it depends, by the job or weekly.

15 Q. Did you produce to me this morning check ledgers for
16 Advance Auto Body from Quickbooks?

17 A. That's correct.

18 MS. BUREAU: May I approach, Your Honor?

19 THE COURT: You may.

20 MS. BUREAU: I'm going to mark Government
21 Exhibit No. 1. I'm sorry, I don't have a sticker.

22 THE COURT: That's fine. If you provide it to
23 the clerk, you can do that. That's fine. I will have a
24 copy. If there's something you believe I need to see,
25 you can use the Elmo. You have to slide it out to the

1 right. I guess we now call it the *document imager*.

2 MS. BUREAU: Thank you, Your Honor.

3 BY MS. BUREAU:

4 Q. Mr. Bierd, is this one of the ledgers that you
5 provided to me this morning?

6 A. Correct. Well, a copy, right, or is this the
7 original?

8 Q. I believe that is your original.

9 A. Okay.

10 Q. Can you tell me what is written in marker on the
11 top?

12 A. "Check Ledger, 67 Pages, 4/1/03 to Present."

13 Q. Okay. So does this check ledger go through recent
14 dates in 2012?

15 A. It would go up to the last transaction put into that
16 account. It may not be -- you know, I believe I printed
17 them on the 27th.

18 Q. Can you look at the last page for me, page 67?

19 A. Okay.

20 Q. What is the last date entered there?

21 A. 7/31/12.

22 Q. Can you look through the 2012 entries in this ledger
23 and tell me where there is a check for Mr. Frederick
24 Weber?

25 A. In 2012?

1 Q. Yes.

2 A. None.

3 Q. Can you look through the 2011 entries and tell me
4 where there is a check for Mr. Frederick Weber?

5 A. I don't see any. Is that a trick question?

6 THE COURT: You didn't --

7 A. I don't think there is any on it.

8 THE COURT: There was no trick involved, sir.

9 THE WITNESS: Well, I can't find one.

10 THE COURT: Next question, Counsel.

11 BY MS. BUREAU:

12 Q. I would like to show you what's marked as Exhibit 2,
13 sir. Do you see that Exhibit 2 is before you?

14 A. Correct.

15 Q. Did you produce this document to me this morning?

16 A. I did.

17 Q. And can you tell me what's written in marker on the
18 top of the page?

19 A. "Check Ledger, 18 Pages, April 1st, '03 to Present."

20 Q. Can you look at the last page, please?

21 A. Okay.

22 Q. What is the date of the last entry there?

23 A. 8/27/12.

24 Q. Can you look through the 2012 entries, please, and
25 tell me if you see an entry for Mr. Weber?

1 A. I don't think there will be any in there.

2 Q. And why is that, sir?

3 A. Well, the entries were entered as *Cash*.

4 Q. So you didn't write a check to him then?

5 A. I had wrotten a check to him. I might have put it
6 in the ledger as *Cash*.

7 Q. And why would you put it in as *Cash* rather than
8 writing his name?

9 A. To protect his anonymity.

10 Q. And why do you want to protect his anonymity?

11 A. Well, I know this would be becoming public record
12 and he's an independent contractor. I don't believe I
13 have the right to bring him into any controversy.

14 Q. Did a process server visit your business location
15 this past Friday?

16 A. I don't recall.

17 Q. You don't recall a process server asking for
18 Mr. Weber --

19 A. Yes.

20 Q. -- on Friday?

21 A. Yes.

22 Q. What did you tell that process server?

23 A. He wasn't there.

24 Q. Did you tell him that he no longer worked there?

25 A. Huh? I don't believe he asked me any questions. He

1 asked if Frederick Weber is here. And I said no, he's
2 not here, and that he would be probably better off
3 getting him at his home.

4 Q. And where does Mr. Weber live?

5 A. Somewheres in Mount Horeb.

6 Q. Is there a document that you have that would reflect
7 his address?

8 A. Maybe somewheres.

9 THE COURT: Have you ever been to his home?

10 THE WITNESS: I have been to his home.

11 THE COURT: So when you drove to Mount Horeb,
12 where did you go?

13 THE WITNESS: It's a small town near Mount
14 Horeb. It consists of, like, ten houses. I don't know
15 the name of the town. I apologize. It's near Mount
16 Horeb.

17 BY MS. BUREAU:

18 Q. Sir, have you filed a Form 1099 related to
19 Mr. Weber?

20 A. Not that I recall.

21 Q. So in the records that you've given me today, there
22 aren't any records of what payments are to Mr. Weber; is
23 that right?

24 A. I don't think so.

25 Q. How would you know how much you've paid him in the

1 past year?

2 A. I probably wouldn't even know that.

3 Q. Are there any other people working with you at the
4 current time?

5 THE COURT: Besides Mr. Weber and Trent Bierd?

6 MS. BUREAU: I was asking besides Mr. Weber.

7 A. Not that I recall. And I knew -- I have a lot of
8 people stop by and I had a lot of help from a lot of
9 people. And I don't know -- some of them haven't been
10 compensated, some of them have been, and I honestly don't
11 keep track of them.

12 THE COURT: As you sit here on the stand under
13 oath, you're telling me you don't remember a single other
14 person's name of someone that you paid to do work at your
15 shop?

16 THE WITNESS: Bill Stewart.

17 THE COURT: How do you spell his last name?

18 THE WITNESS: S-T-E-W-A-R-T.

19 THE COURT: And where does he live?

20 THE WITNESS: I'm not sure.

21 THE COURT: Have you ever been to his home?

22 THE WITNESS: Brooklyn.

23 THE COURT: Brooklyn, Wisconsin?

24 THE WITNESS: Correct.

25 THE COURT: Anyone else that, as you sit here

1 under oath --

2 THE WITNESS: Gordon Tannahill.

3 THE COURT: How do you spell his name?

4 THE WITNESS: T-A-N-N-A-H-I-L-L.

5 THE COURT: And where does he live?

6 THE WITNESS: I'm not sure. It's been a while.

7 THE COURT: You haven't been to his home?

8 THE WITNESS: No.

9 THE COURT: All right. Anyone else?

10 THE WITNESS: My brother.

11 THE COURT: What's his name?

12 THE WITNESS: Actually, two of them -- Gabriel
13 Winter and Shane Bierd.

14 THE COURT: And where do they live?

15 THE WITNESS: My brother lives in Deerfield.

16 THE COURT: Which brother?

17 THE WITNESS: Shane. Gabriel lives in Columbus.

18 THE COURT: All right. Anyone else that you
19 recall?

20 THE WITNESS: Randall Schmunk. S-C-H-M-U-N-K.

21 And he lives somewheres up north now. He used to live in
22 the area.

23 THE COURT: And when did he do work for you?

24 THE WITNESS: On and off through the years.

25 THE COURT: Meaning how recently?

1 THE WITNESS: Oh, it's been several years;
2 probably three, four years.

3 THE COURT: All right. Anyone else that you
4 recall doing work for you?

5 THE WITNESS: If I would have known, I could
6 have prepared a list.

7 THE COURT: Where would you go to look for a
8 list?

9 THE WITNESS: Well, probably mostly from memory.
10 But like I say, as I sit here on the stand and I --

11 THE COURT: And you wrote all of the checks to
12 those people by simply --

13 THE WITNESS: They should be in here. Some
14 should be in here, in the ledger.

15 THE COURT: All right. On the first page are
16 there any? You're talking, when you say "here," Exhibit
17 2?

18 THE WITNESS: Exhibit 2.

19 THE COURT: Why don't you continue through until
20 you find an example.

21 THE WITNESS: There are a lot of pages here.
22 This is a fairly new account. Exhibit 1.

23 THE COURT: All right.

24 THE WITNESS: Brian Wetzel.

25 THE COURT: He's on the first page of Exhibit 1?

1 THE WITNESS: Correct.

2 THE COURT: And that payment there is in his
3 name, it's a check you wrote, and it was for work he did
4 for your business; is that correct?

5 THE WITNESS: Correct.

6 THE COURT: All right. Do you see others on
7 that first page?

8 THE WITNESS: That's all I see.

9 THE COURT: All right. And you think there
10 should be other indications, although not for Mr. Weber;
11 is that right?

12 THE WITNESS: Sorry?

13 THE COURT: You think there should be other
14 indications of checks paid, made payable to
15 individuals --

16 THE WITNESS: Maybe.

17 THE COURT: -- on that list? Why don't you go
18 through and tell me if you see another one.

19 THE WITNESS: I will.

20 THE COURT: While Mr. Bierd is doing that, you
21 might want to go to your right and you will see there is
22 a drawer to the right of the podium and you can just pull
23 that out and then just lift the arm.

24 MS. BUREAU: Okay.

25 THE COURT: And then if you need to refer to

1 something for the Court and the witness, you may do so.

2 MS. BUREAU: Thank you.

3 THE COURT: Mr. Bierd, you're a ways through the
4 document. Have you seen an instance of writing a check
5 in someone's name?

6 THE WITNESS: Not yet.

7 THE COURT: So, for the most part, the work that
8 people did, you paid them by writing *Cash* on a check, is
9 that your testimony, or at least you didn't enter it into
10 your check ledger?

11 THE WITNESS: Yeah. I most likely made the
12 check out to the person. I may have entered it as *Cash*
13 or entered it in the person's name.

14 BY MS. BUREAU:

15 Q. Mr. Bierd, you turned in two other ledgers to me
16 this morning, correct?

17 A. Yes.

18 Q. And neither one of those ledgers went until 2012; is
19 that right?

20 A. I don't think so.

21 Q. Okay. There was a payroll ledger; is that right?

22 A. Yes.

23 Q. Okay. Do you recall how far that payroll ledger
24 went?

25 A. It should be to present --

1 Q. I will --

2 A. -- because that was -- I didn't print that out of
3 the register; I printed that out of the federal category.

4 MS. BUREAU: The Court's indulgence, Your Honor.
5 Exhibit 3, please.

6 BY MS. BUREAU:

7 Q. Sir, I've placed a document marked Exhibit 3 in
8 front of you. Do you recognize that document?

9 A. Yes.

10 Q. Can you tell me what that is?

11 A. Well, the first page is a payroll summary, the dates
12 requested by the government.

13 Q. Can you tell me what the time span of that document
14 is?

15 A. That would be -- well, the header on the top, I
16 printed it April 1st, 2003 through August 27th, 2012.

17 Q. Are there any entries in that payroll summary for
18 2012?

19 A. None.

20 Q. Are there any entries in that summary for 2011?

21 A. None.

22 Q. Sir, do you maintain a list of people who work for
23 you in the business currently?

24 A. No.

25 Q. Do you have a phone list?

1 A. Probably on my cell phone.

2 Q. So you store numbers --

3 A. I probably have numbers stored on my cell phone,
4 yes.

5 THE COURT: You probably do or you do have
6 numbers?

7 THE WITNESS: Yeah.

8 THE COURT: So your answer is yes?

9 THE WITNESS: Yes, sir.

10 THE COURT: Next question.

11 BY MS. BUREAU:

12 Q. In the past year has Mr. Billy Stewart worked for
13 you?

14 A. He has not.

15 Q. In the past year has Gordon Tannahill worked for
16 you?

17 A. Has not.

18 Q. In the past year has Gabriel Winter worked for you?

19 A. I don't believe so.

20 Q. In the past year has Shane Bierd worked for you?

21 A. Has not.

22 Q. In the past year, Trent Bierd worked for you; is
23 that right?

24 A. Yeah.

25 Q. Can you tell me what Trent Bierd does at Advance

1 Auto?

2 A. Well, he's -- he wants to learn the business and
3 he's kind of hanging around. He does cleanup. He
4 does -- if I can run and get parts or something, he can
5 answer the phone, just general -- you can call him an
6 *apprentice*.

7 Q. How old is Trent Bierd?

8 A. He's 20.

9 Q. How many hours per week does he work for you?

10 A. Well, he's there most of the time. But he's my son,
11 I'm his dad, and we get along rather well and he's with
12 me most of the time.

13 Q. Do you pay him for his services?

14 A. I pay him, yeah. I mean, if he does work for me, he
15 gets paid.

16 Q. Does he use tools in his work for you?

17 A. Yes.

18 Q. And where does he obtain those tools?

19 A. They're mine.

20 Q. Do you have a contract with him?

21 A. I do not.

22 Q. Is there anyone else currently working for you that
23 we haven't already talked about?

24 A. Not currently, no.

25 Q. How are you compensated for your work at Advance

1 Auto?

2 A. Well, I take pretty much a weekly check from my
3 company.

4 Q. Do you write that check out to yourself?

5 A. Yes.

6 Q. Were you at the deposition of your wife this
7 morning?

8 A. Yes. In the past I had made them out to my wife as,
9 like I tried to explain that, as -- you weren't taking my
10 deposition -- but as a matter of convenience only. I had
11 made -- I make checks out to my wife, she can put them
12 into the family account and take care of household
13 expenses.

14 Q. The checks that you write to yourself, are they
15 in -- are they entered in any of the exhibits that are
16 now in front of you?

17 A. They should be, yes.

18 THE COURT: And you're looking now at exhibit
19 what?

20 THE WITNESS: 2.

21 THE COURT: And does it have a pagination number
22 on the page you're referring to?

23 THE WITNESS: I'm sorry?

24 THE COURT: Is there a page number on the
25 document?

1 THE WITNESS: Yeah.

2 THE COURT: What page number?

3 THE WITNESS: Well, I found it first on 13.

4 THE COURT: All right. And what's the entry
5 that you're -- the date and the nature of the entry that
6 you're referring to?

7 THE WITNESS: This one is 5/17/2012 entered in
8 under *Owner Draw*.

9 THE COURT: And how much is it for?

10 THE WITNESS: 750, \$750.

11 THE COURT: Next question, Counsel. It's page
12 13.

13 BY MS. BUREAU:

14 Q. Sir, have you ever told the government that you have
15 independent contractors, before?

16 A. Nobody has asked.

17 Q. You were served with a complaint in this case; isn't
18 that right?

19 THE COURT: Actually, two complaints, right?

20 A. Yeah. I have gotten a lot of papers from the
21 government.

22 Q. And you were served with an order for preliminary
23 injunction; isn't that right?

24 A. Yeah. I'm sure that would probably be the title of
25 one of them.

1 Q. You were served with a copy of that order in
2 December of 2011; isn't that right?

3 A. Preliminary injunction November 15th, 2011?

4 Q. Are you looking at a copy of the order of
5 preliminary injunction, sir?

6 A. I think so.

7 Q. Is that a date that's on the top of it?

8 THE COURT: What's the title on the first page
9 of the document?

10 THE WITNESS: *Order of Preliminary Injunction.*

11 THE COURT: The answer is yes, that's what
12 you're reviewing? You need to answer yes or no, sir.

13 THE WITNESS: It's dated the 7th of November.

14 BY MS. BUREAU:

15 Q. And you were served later with a copy of this
16 injunction; isn't that right?

17 A. I'm sure, yes.

18 Q. Did you make any federal tax deposits after you
19 received a copy of this injunction order?

20 A. I did not.

21 Q. And why didn't you do that?

22 A. Like I said, there was no one -- there weren't any
23 employees.

24 Q. Did you ever contact me to tell me that you had no
25 employees?

1 A. No.

2 Q. Did you ever contact anyone at the IRS to tell them
3 that you had no employees?

4 A. No.

5 Q. Did you ever file a Form 941 stating that your
6 business no longer had W-2 employees?

7 A. No.

8 Q. Besides Trent Bierd and Mr. Weber, is there anyone
9 else who has worked for you in the past year at Advance
10 Auto?

11 A. I would say no.

12 Q. Has someone named *Rochelle Mehren* (ph) ever worked
13 for you? Has someone named *Rochelle Mehren* (ph) ever
14 worked for you

15 A. No.

16 Q. Has someone by the last name of *Mehren* (ph) ever
17 worked for you?

18 A. I don't think so.

19 Q. Who's currently at the business right now?

20 A. My son.

21 Q. Is there anybody else there?

22 A. I don't know. I'm not there. My son is definitely
23 there.

24 MS. BUREAU: I don't have anything further, Your
25 Honor.

1 THE COURT: Have the Bierds filed a personal tax
2 return each year?

3 MS. BUREAU: No, they have not, Your Honor.

4 THE COURT: Mr. Bierd, is there some reason why
5 you believed you did not have to file a tax return, you
6 personally?

7 THE WITNESS: Me personally?

8 THE COURT: Yes.

9 THE WITNESS: Well, all of my studies, sir. The
10 IRS tells me I'm frivolous, but I don't believe I have
11 any taxable -- taxable income.

12 THE COURT: You believe that you're exempt from
13 filing a tax return?

14 THE WITNESS: Correct.

15 THE COURT: And what do you base that on?

16 THE WITNESS: Well, I'm not a federal citizen,
17 as far as I know. I don't work for the U.S. Government.

18 THE COURT: Okay.

19 THE WITNESS: And I don't think I --

20 THE COURT: You understand that you live in the
21 United States of America?

22 THE WITNESS: Geographically, not politically.

23 THE COURT: You're a citizen of this country,
24 but you don't accept that; is that your position?

25 THE WITNESS: That's not my political status.

1 THE COURT: Okay. You understand that under the
2 laws of the United States, you are considered a citizen
3 of this country whether you consider yourself one or not,
4 correct?

5 THE WITNESS: I believe by presumption.

6 THE COURT: All right. And you also know that
7 under the laws of the United States, you are required to
8 file tax returns, correct?

9 THE WITNESS: If I was a U.S. citizen, yes. I
10 don't believe I am.

11 THE COURT: You understand that hundreds of
12 millions of other people living in this country file tax
13 returns --

14 THE WITNESS: I'm sorry. I'm getting very dry
15 here. I do understand that, sir.

16 THE COURT: -- and are supporting the services
17 that you use, like the roads that you drive on?

18 THE WITNESS: I believe that's funded by my gas
19 tax.

20 THE COURT: But it's also funded by other taxes
21 and it funds the police officers who protect you; you
22 understand that?

23 THE WITNESS: I pay a lot of local taxes.

24 THE COURT: Not enough, sir, to cover the
25 expenses. They also defend this country. You understand

1 that other people are paying for the defense of this
2 country that you live in?

3 THE WITNESS: Well, I don't want to sound
4 adversarial, but I don't believe the circumstances have
5 changed since the Grace Commission's report of 1984.

6 THE COURT: My question is, sir, do you
7 understand that other people are paying for the defense
8 of this country that you are living in and you are not?

9 THE WITNESS: I don't believe that's true, sir.
10 I believe that the -- well, I'll quote the Grace
11 Commission: "Not one dime of our collected income tax
12 goes to pay for government services." That was their
13 quote, not mine. It's gone to service the debt, which
14 that's the basis, sir, of my lack of filing.

15 THE COURT: And you understand that that
16 argument has been made all the way to the United States
17 Supreme Court and it has never been accepted?

18 THE WITNESS: Well, sir, when you examine the
19 fact that we're in as much trouble as we are as a nation
20 financially -- I study this a lot -- we've been held
21 hostage by a banking cartel and I can't go along with it.
22 I believe it's a hundred-percent fraud, sir, and it
23 hasn't nothing to do with civic responsibility.

24 THE COURT: Well, it has to do with the
25 consequences of your decision. You understand that

1 ultimately you're violating federal law by not paying,
2 and are you prepared to accept the consequences of that
3 belief? You're welcome to that belief, but then are you
4 prepared to accept the consequences of it?

5 THE WITNESS: Well, is it an accurate argument?
6 Is it not accurate to say that we've been held hostage by
7 a banking cartel?

8 THE COURT: It is not an accurate statement of
9 the law of this country as decided by Congress, the
10 President and the United States Supreme Court. And
11 whatever you believe, it is not the law in this country
12 and there are consequences. And I'm asking, are you
13 willing to accept the consequences of that belief?

14 THE WITNESS: I don't want any harm to come to
15 me or my family; no, sir.

16 THE COURT: Well, that's the consequence of your
17 continuing to refuse to comply with the tax laws of this
18 country.

19 THE WITNESS: But if -- would you allow me to
20 explain?

21 THE COURT: You're welcome to explain, but that
22 won't change what the law is.

23 THE WITNESS: Yeah. Well, the IRS Code was
24 enacted in the same year that the Federal Reserve Act was
25 enacted. And, quite frankly, sir, I believe it's a

1 conspiracy against mankind.

2 THE COURT: And you're welcome to that belief.
3 That's one of the wonderful things about our country.
4 You can believe whatever you'd like.

5 THE WITNESS: But it's very well documented.

6 THE COURT: But it doesn't change the fact that
7 the United States Supreme Court has rejected exactly this
8 argument repeatedly, as have every lower federal court
9 that's been presented with it. And it is not an accurate
10 statement of the law and consequences will result. I
11 just want to make sure that you understand the
12 consequences.

13 THE WITNESS: I want to comply with whatever
14 this Court orders me to do because I have a
15 responsibility, first and foremost, to my family and my
16 community. And I won't be able to do -- I will not be
17 able to uphold those responsibilities behind bars, so no,
18 sir.

19 THE COURT: Well, then you need to comply with
20 the tax laws of this country.

21 THE WITNESS: I'm --

22 THE COURT: And I issued an order. You know,
23 what really bothers me about this is that it's not just
24 wasting my time; it's wasting these people's time, it's
25 wasting the court reporter's time, it's wasting the

1 clerk's time; it's wasting federal officers, marshals who
2 had to go out and serve you with documents.

3 And now, as you sit here in front of me, for the
4 first time it's dawned on you that there are consequences
5 to contempt for this court and for the laws of the United
6 States. That really bothers me because we had to go
7 through all of this effort in order to get you to finally
8 accept what is the law and unequivocally the law of this
9 country. And I don't know, sir, how you can sit here and
10 take that position.

11 THE WITNESS: Isn't that the spirit of what this
12 country was founded on?

13 THE COURT: It is if you're willing to accept
14 the consequences of it; yes, sir. You have every right
15 to refuse to comply with the law and then you can go to
16 jail. But to show up here at the eleventh hour and tell
17 me, oh, no, I don't want to go to jail, it's just
18 astounding to me. What makes you so much better than
19 anyone else in this country?

20 THE WITNESS: I am not better than anyone else
21 in this country.

22 THE COURT: Well, apparently you are because you
23 think you're free to decide what the law of the United
24 States is; and you are not, sir, any more than I am or
25 anybody else is able to. We all have to comply with the

1 law or accept the consequences of not complying with the
2 law, and now you're telling me you don't want the
3 consequences.

4 All right. You may step down. Does the government
5 have anything further they wish to present?

6 MS. BUREAU: Your Honor, based on Mr. Bierd's
7 testimony, he hasn't met his burden of showing that in
8 fact he couldn't comply with the order. His testimony
9 does not indicate that those are independent contractors.
10 It seems to indicate that in fact those are employees
11 operating under his control.

12 So for those reasons, Your Honor, we'd reiterate our
13 request that he be held in contempt of court. He hasn't
14 met his burden to prove that he had a reasonable basis
15 for not complying with the Court's order.

16 THE COURT: All right. Mr. Bierd, anything more
17 you wish to say to the Court before I determine if you
18 are in contempt of court?

19 MR. BIERD: Sir, the spirit that is within me is
20 not a spirit of rebellion; it's a spirit of I believe
21 responsibility. I believe that -- you mentioned the
22 eleventh hour. I believe we're past the eleventh hour of
23 this country's fate. I believe we're in serious trouble,
24 sir. And if something is not done -- I believe, as an
25 individual, I'm doing everything within my power as an

1 individual. I'm one man.

2 THE COURT: And I would have so much more
3 respect for your position if you were willing to accept
4 the consequences of it, but you are in contempt of this
5 Court's order. You have flouted the tax laws of the
6 United States --

7 MR. BIERD: I've communicated --

8 THE COURT: -- and I find you in contempt of
9 Court. Now, the question is, what is the result of that
10 determination. And I'll hear from the government as to
11 what you would ask for at this point.

12 MR. BIERD: Sir?

13 MS. BUREAU: May I have a moment to consult with
14 the IRS?

15 THE COURT: You may.

16 MR. BIERD: Sir?

17 THE COURT: I'll give you a moment.

18 MR. BIERD: Okay.

19 MS. BUREAU: Your Honor, Mr. Bierd has had
20 almost a year now to comply with the Court's preliminary
21 injunction order or I believe it's about nine months. If
22 the Court -- he's indicating now that he wants to comply.
23 If the Court wishes to give him more time, we'd ask that
24 it be no more than 30 days to comply with paying his
25 employees correctly and beginning to make federal tax

1 deposits. We would ask that there be no further delay in
2 getting him to comply because he has had plenty of time
3 to do so.

4 THE COURT: What are the circumstances of his
5 personal income taxes, what is the government's position,
6 or are you just today concerned with his treatment of the
7 employees that work for him?

8 MS. BUREAU: Just the employees, Your Honor.
9 The personal income taxes were not referred to the
10 Department of Justice or -- may I have a moment to
11 consult, Your Honor?

12 THE COURT: You may.

13 MS. BUREAU: Yes, Your Honor, that particular
14 matter has not been referred to the Department of
15 Justice. Additionally, Your Honor, if the Court is going
16 to give him some amount of time to comply with the
17 preliminary injunction order, we would also ask that the
18 defendant produce documents so that we can verify exactly
19 who was paid in the past year since the preliminary
20 injunction order, exactly how much they were paid, so
21 that the IRS can make sure that this is accurate and that
22 any 941 returns that are filed are indeed accurate.

23 THE COURT: All right. I am going to give
24 Mr. Bierd seven days to comply with this Court's
25 preliminary injunction order. If, at the end of those

1 seven days, I have not received a notice from the
2 government that you are in compliance, you will be
3 arrested and held until you have complied with this
4 Court's order, the order of preliminary injunction. If
5 you have any questions about that, I would say you work
6 closely with the government because it will be their
7 representation that I will follow.

8 Second, you will make available all the records of
9 your business, between the hours of 8 a.m. and 6 p.m.,
10 each workday, now until you have fully complied.

11 MR. BIERD: Okay. May I add something, sir?

12 THE COURT: You may.

13 MR. BIERD: I just want to say that I haven't
14 bucked any notice. I haven't bucked any kind of
15 communication with the IRS.

16 THE COURT: You've bucked an order of
17 preliminary injunction from this Court.

18 MR. BIERD: I have a record of communication
19 with all the people involved with this all the way back.

20 THE COURT: Sir, unless I get notice of
21 compliance, you're going to be in jail the next time I
22 see you.

23 MR. BIERD: And, yes, sir, I am going to do the
24 best I can to get this resolved as soon as possible and
25 comply with your order.

1 THE COURT: All right.

2 MR. BIERD: But I just want the record to show
3 that I have not neglected any of this. I've been trying
4 to get an answer.

5 THE COURT: On the contrary, sir. You have
6 acted in contempt of court. You have neglected your
7 responsibilities with respect to the withholdings and
8 income taxes for what are certainly employees of your
9 company. And to the extent your position is they are
10 not, you still had obligations to make filings with
11 respect to independent contractors. You've done none
12 of that.

13 In fact, you've testified under oath today that you
14 purposefully paid people in cash to avoid their having
15 responsibility to pay their income taxes and you yourself
16 have not filed income taxes either.

17 And the last statement I'll make for the record is
18 that I also will refer you for prosecution by the
19 Department of Justice for flouting the laws of the United
20 States with respect to your own income taxes. It will be
21 up to the Department of Justice whether they prosecute.
22 But I have heard nothing today that would cause me to
23 think that you are not -- you have not violated criminal
24 laws of the United States of America.

25 And whether or not you are willing to accept the

1 consequences of that decision and whether or not you
2 think you are fully justified, there are consequences for
3 that behavior. And more than most of the criminal
4 defendants I've had in my courtroom, I believe you are
5 deserving of that consequence.

6 In any event, we will stand adjourned and the Court
7 will enter an order consistent with -- I'm sorry, in
8 recess -- the Court will enter an order consistent with
9 its ruling today. Anything further for the government?

10 MS. BUREAU: Yes, Your Honor. I just wanted to
11 reiterate a request for a default judgment, including a
12 default judgment of permanent injunction along identical
13 terms with the preliminary injunction.

14 THE COURT: You have a default.

15 MS. BUREAU: Okay.

16 THE COURT: I am willing to make part of that,
17 of the ultimate default judgment, continued compliance
18 with the preliminary injunction. But we're not done with
19 respect to -- you have a request for damages. I haven't
20 been given any evidence of those damages. Obviously, I
21 have the complaint, but the government will have to
22 establish what monetary damages are appropriate here and
23 that has yet to be determined.

24 MS. BUREAU: I will submit certificates of
25 assessment and payment of the taxes involved, Your Honor.

1 THE COURT: All right. And I encourage you to
2 provide the factual background for it, whatever that is.
3 A simple certificate -- I believe my responsibility is to
4 establish actual damages, which even with the defendant's
5 default, still requires that I have some documentation of
6 it, and I will await that submission.

7 MS. BUREAU: Yes, Your Honor.

8 THE COURT: Very good. We'll will stand in
9 recess then.

10 (Adjourned at 1:58 p.m.)

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1 I, CHERYL A. SEEMAN, Certified Realtime and
2 Merit Reporter, in and for the State of Wisconsin,
3 certify that the foregoing is a true and accurate record
4 of the proceedings held on the 30th day of August, 2012,
5 before the Honorable William M. Conley, Chief Judge of
6 the Western District of Wisconsin, in my presence and
7 reduced to writing in accordance with my stenographic
8 notes made at said time and place.

9 Dated this 14th day of September, 2012.

10
11
12
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14
15 _____ /s/

16 Cheryl A. Seeman, RMR, CRR
17 Federal Court Reporter
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